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Subject: RE: Withholding Question

If a partnership is required to withhold under sections 1441-1446, that withholding is a partnership item of that partnership: sections 1441-1446 are provisions of Subtitle A more appropriately determined at the partnership level than at the partner level. Treas. Reg. 301.6231(a)(3)-1(a)(1)(v).

For these purposes, the partnership entity is the taxpayer. Thus, the Service needs to extend the limitations period to assess the partnership entity. The Service should obtain a F872 from the partnership entity, signed by a general partner/managing member, or any person with authority under state law to bind the partnership entity. Alternatively, to the extent that courts uphold the Service's position that, for these purposes, the partnership entity is a "partner" as defined by section 6231(a)(2)(B), then a F872P signed by the TMP of the partnership would extend the limitations period to assess against the partnership entity the withholding.

If the withholding partnership (X) is a partner in a TEFRA partnership (Y), a F872P re that nonwithholding TEFRA partnership (Y) (the lower tier) would extend the limitations period to assess against the withholding partnership(X) (the middle tier) the withholding amount only if the withholding is an affected item of the lower tier (Y). The primary hazard would be whether the withholding amount is an affected item of the lower tier (Y).